FILED
JAN 20 1956
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

October Term, 1955

No. 574

WILLIAM E. WARD,
Petitioner

vs.

CHARLES S. THOMAS, Secretary of the Department of the Navy,
Respondent

PETITIONER'S REPLY BRIEF TO BRIEF FOR RESPONDENT

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WILSON - EPES PRINTING CO. - RE 7-6002 - WASHINGTON 1, D. C.

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In the Brief for Respondent in opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, filed herein, gross inaccuracies appear, as to both the facts and the law, which require a reply.

First, the "QUESTION PRESENTED" therein is erroneously set forth. PETITIONER WAS NOT REMOVED FOR "IMPROPER CONDUCT", as alleged by respondent (Resp. Brief, p. 2). He was removed for "UNSATISFACTORY SERVICE",—as he was orally told on May 7, 1951, and as he was informed at all times thereafter, including the formal "Notification of Personnel Action", a photostat of which appears on page 27 of petition herein.

Next, the respondent endeavors to convey the false impression that petitioner contends that Section 6 of the

Act of September 30, 1950, referred to as the Performance Rating Act of 1950, 5 U.S.C. § 2005, "was intended to limit discharges *for cause* under the Lloyd-LaFollette Act", 5 U.S.C. 652, (Resp. Brief, p. 7). The petitioner, at no time, raised such a contention. Section 6 of the Act of September 30, 1950, has reference to *job performance* and not *"misconduct"* or *"discharges for cause"*. It provides for a procedure to be complied with in the removal of a government employee for "unsatisfactory service" or job performance.

At the time of the enactment of this Act, federal employees were being removed from office on any ground whatsoever, under regulations promulgated under the Lloyd-LaFollette Act of 1912.

However, at the hearings, pertaining to the 1950 legislation, representatives of various government employee organizations, appeared, and urged that where job performance was involved, federal career workers should be protected against misuse of laws or administrative regulations, then in effect, governing personnel.

The legislative history of the Act of September 30, 1950, reveals that Chairman Mitchell and Commissioner Perkins of the Civil Service Commission considered removal regulations then in effect, adequate in "protecting employees against arbitrary, capricious or unjust discharge", for misconduct, inefficiency or for any other reason. But Congress thought otherwise, and overruled their objections, and the removal provision in question thus *was incorporated in the law.*

There can be no question that Congress intended to prescribe a procedure in the new law, governing the removal of federal employees where job performance was involved.

To offset this construction of the law, the respondent endeavors to suggest (Resp. Brief, p. 14) that although this may be the construction of the law by a subsequent

Congressional Committee, such later construction "cannot be invoked to supplant the contemporaneous intent of the Congress which enacted the particular legislation under consideration". There is no such attempt made, whatsoever. THE INTENT OF THE CONGRESS THAT ENACTED THE REMOVAL PROVISION OF SECTION 6 OF THE ACT OF SEPTEMBER 30, 1950, WAS IDENTICALLY THE SAME AS THE SUBSEQUENT CONGRESS CONSTRUED IT TO BE.

As stated in the case of United States v. Henning, 344 U.S. 66, cited by respondent,

> "The conclusion is irresistible that . . . Congress said what it meant and meant what it said."

Petitioner, in his brief, has set forth specific important "Reasons for Granting the Writ". Nowhere in respondent's brief has exception been taken to such reasons, or any of them, because the respondent unquestionably recognizes their merit,—that questions of grave and vital importance are involved, affecting several million federal employees; that the issue involved raises a substantial question of law for the first time; that a final determination should be made by this Honorable Court as to the applicability of Section 6 of the Act of September 30, 1950, where a federal employee's removal was sought because of his alleged *unsatisfactory work performance and not for "misconduct"*.

It is respectfully submitted that a Writ of Certiorari should be granted herein.

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